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Nos. 14-556, 14-562, 14-571, 14-574

In The
Supreme Court of the United States

JAMES OBERGEFELL, ET AL., *Petitioners,*
v.
RICHARD HODGES, ET AL., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

Amicus Curiae Brief of Leaders of the 2012 Republican National Convention Committee on the Platform and Others Supporting Respondents

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Question Presented

Whether the State has a sufficiently important interest in promoting traditional marriage between one man and one woman when traditional marriage supports traditional families, which are the foundation of a free society.

Table of Contents

Table of Authorities. iv

Statement of Interest. 1

Summary of Argument. 3

Argument. 6

I. The Republican Party Supports Traditional Marriage Because the Traditional Family Is the Foundation of a Free Society. 9

A. The Traditional Family Guards Against Poverty and the Need For the Growth of the Welfare State. 15

B. The Traditional Family Protects Against Tyranny And Government Excess. 20

II. Traditional Marriage Ensures A Free Society By Protecting the Traditional Family. 21

A. Traditional Family Is Stable, Independent, Self-Supporting and Self-Sufficient, Replicating Itself Indefinitely. 21

B. Traditional Marriage Offers Unique Features That Reinforce The Strength of Traditional Family. 22

C. Traditional Marriage Benefits Husbands, Wives and Mothers, Children, and Society. 24

1. Mothers Benefit from Traditional Marriage. 25

2. Men Benefit From Traditional Marriage. 25

3. Children Benefit From Traditional Marriage..... 27
4. Society Benefits From Traditional Marriage..... 30
III. The Traditional Family Is Undermined By Legal Recognition of Same-Sex Marriage.. 31
A. The History of the Same-Sex Marriage Movement.. 31
B. The Legalization of Same-Sex Marriage Requires a Redefinition of Marriage.. 34
C. Same-Sex Marriage Does Not Provide the Same Benefits as Traditional Marriage.. 36
D. The Legalization of Same-Sex Marriage Does Not Promote Marriage.. 40
Conclusion. 41

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Statement of Interest[1]

Amici Curiae are members of the leadership of the 2012 Republican National Convention Committee on the Platform: Co-Chairman of the Committee Congresswoman Marsha Blackburn (R-TN), and Co-Chairmen of the Subcommittees with jurisdiction over marriage and family James Bopp, Jr. (Subcommittee on *We the People: A Restoration of Constitutional Government*) and Carolyn McLarty (Subcommittee on *Renewing American Values to Build Healthy Families, Great Schools and Safe Neighborhoods*).

Amicus Congresswoman Marsha Blackburn served as Co-Chairman of the 2012 Republican National Convention Committee on the Platform. Congresswoman Blackman is a small-business woman, author, wife, mother, grandmother and former Tennessee State Senator from Williamson County, Tennessee. She has served as the Congresswoman from the 7th Congressional District of Tennessee since 2002.

Amicus James Bopp, Jr. served as Co-Chairman of the Subcommittee on *We the People: A Restoration of Constitutional Government* of the 2012 Republican National Convention Committee on the Platform. Mr. Bopp is a practicing attorney with The Bopp Law Firm

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[1] No counsel for a party authored this Brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this Brief. No person other than amici curiae, its members, or its counsel made a monetary contribution to this Brief's preparation or submission. The parties' counsel of record received timely notice of Amici's intent to file this brief pursuant to Rule 37(a) and have consented to its filing.

in Terre Haute, Indiana. He was a member of the Republican National Committee from 2006 to 2012 and was elected as RNC Vice-Chairman, 2008-2012. He was Chairman of the Conservative Steering Committee from 2008 to 2011 and was a member of the Republican National Convention Committee on the Platform in 2000, 2004, 2008 and 2012.

Amicus Carolyn McLarty, DVM served as Co-Chairman of the Subcommittee on *Renewing American Values to Build Healthy Families, Great Schools and Safe Neighborhoods* of the 2012 Republican National Convention Committee on the Platform. Dr. McLarty is a retired veterinarian from Woodward, Oklahoma. She has been a member of the Republican National Committee since 2008. She has served as an elected member of RNC Standing Committee on Resolutions since 2009 and as its Chairman since 2012. She has been Chairman of the Conservative Steering Committee since 2011. She was a member of the Republican National Convention Committee on the Platform in 2012.

Amicus Conservative Steering Committee is an independent organization of current members of the Republican National Committee. It meets regularly in conjunction with the meetings of the RNC to discuss issues of importance to the Republican Party and its members The Steering Committee is currently made up of a majority of the members of the RNC and they voted to approve submission of this Amici Curiae Brief to the Court.

Amici Curiae respectfully submit this Brief in support of the states' important interest in protecting and promoting traditional marriage and family as the

foundation of a free society.

Summary of the Argument

The Republican Party has sought to protect and promote traditional marriage and family as the foundation of a free society, since the success of traditional families minimizes the need for government programs and intervention and because traditional families form a bulwark against the growth of government and its excesses. As a result, many states have protected and promoted traditional marriage in pursuit of this important government interest, often with bipartisan support, and their laws that do so are thereby constitutional.

Since its inception, the Republican Party has been the champion of equality, individual freedom and limited government and, as a result, of the family. Since 1856 and throughout its history, as demonstrated in its Party's Platform and Resolutions, the Republican Party has sought to strengthen traditional marriage and family, by protecting it against various threats that have arisen that would undermine the traditional marriage and family, including polygamy, death of fathers (in every war or conflict since the Civil War), loss of citizenship for American women marrying immigrant men, welfare programs that erodes and discourages family formation and continuation, nationalized compulsory health insurance, abortion, the marriage tax, pornography, and divorce.

Furthermore, the Republican Party has supported efforts to strengthen traditional marriage and family, such as by supporting equal pay for workers regardless of sex, protecting America's farming families, support-

ing housing for low-income families, supporting adoption, parental authority and responsibility, protecting the family's economic liberty and moral rights, increasing child tax credits, and promoting family planning through abstinence.

Finally, the history of the Republican Party demonstrates that support for traditional marriage and family has had nothing to do with animus toward any group, but because of the demonstrated fact that traditional marriage and family is a positive good for a free society in many ways and is central to its creation and maintenance.

Traditional family is able to offer societal safeguards because it is inherently **1)** stable (76% of mothers who marry before giving birth remain married); **2)** independent (it can exist without government and creates allegiances that help defend against government excesses); **3)** self-sufficient (it is more likely to keep women and children out of poverty); and **4)** perpetuates itself indefinitely (through the birth of children).

Traditional marriage strengthens the traditional family because it is designed to be **1)** permanent (a lifelong commitment promotes stability), **2)** monogamous (strong commitments to just one spouse promote independence and self-sufficiency), **3)** sexually exclusive (which promotes perpetuation), **4)** comprehensive (it encompasses every aspect of a spouse's existence and so promotes stability), **5)** unified in objective (promotes stability, independence and self-sufficiency), and **6)** heterosexual (which promotes stability, self-sufficiency, and perpetuation).

Traditional marriage frequently benefits everyone. Mothers are more readily protected from poverty and are offered a stable and secure environment to raise their children. Men are given familial obligations and responsibilities to channel their energy and aggression into socially desirable ends, protecting and supporting his wife and children, and are less likely to be marginalized and disinclined to work. Children are tied biologically to their parents and benefit from the complementary parenting styles that a mother and father provide. And society is more likely to be comprised of adults exhibiting trust, cooperation, and self-restraint, with a commitment to and responsibility for their families.

Same-sex marriage often does not provide such benefits. Historically, gay liberationists sought to abolish the institution of marriage altogether. This changed with Massachusetts' 2003 *Goodridge* court decision, which struck down that state's prohibition of same-sex marriage. Same-sex marriage was then pursued because of its disruptive effect on traditional marriage: marriage would need to be redefined. Marriage no longer would serve to bolster the traditional family, but instead would make traditional marriage's beneficial elements optional, subjugating the needs of children to the emotional attachments of adults.

As a result, same-sex marriage typically lacks the key features the traditional family needs to ensure a free society. It is less permanent and stable, with male homosexual couples 50% more likely to divorce than heterosexual couples, and lesbian couples 167% more likely to divorce than heterosexual couples. It is less likely to be sexually exclusive, with one half of a

percent (0.5%) of male homosexual couples being faithful to each other. Indeed, because it segregates the sexes, men are less likely to be monogamous and women are more likely to initiate divorce. Children especially can suffer as a result if they are not provided meaningful interaction with a parent of the opposite sex.

Same-sex marriage has not promoted marriage, either, as marriage rates continue to decline in most countries that recognize it. And with its redefinition of marriage, many homosexual rights scholars recognize that this means that a host of other familial arrangements should fall within state-sanctioned marriage. The Republican Party, which at its founding opposed polygamy, now finds itself coming full circle.

The states have an important interest in protecting and promoting traditional marriage and family as the foundation of a free society, so their laws doing so are constitutional.

Argument

This Court has repeatedly observed that infringements on "fundamental liberty interests" and distinctions between similarly situated groups[2] will be upheld when the state has a sufficiently important govern-

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[2]This Brief expresses no opinion on whether these cases present a situation where a "fundamental liberty interest" is infringed, or where Fourteenth Amendment equal protection is triggered. Rather, this Brief argues that, regardless of the level of scrutiny, the states' interest in promoting traditional marriage and family, because it is the foundation for a free society, is sufficiently important to uphold the laws at issue herein.

mental interest. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (*quoting Reno v. Flores*, 507 U.S. 292, 302 (1993)). Respondent States have precisely such an important interest because traditional marriage and family is the foundation of a free society. So states have resisted efforts to redefine marriage and instead seek to protect traditional marriage between one man and one woman.

Traditional marriage "fosters characteristics such as faithfulness and support that strengthen the foundational building block of society—the family." Peter Frank, *Marriage and the Family: The Social and Economic Costs*, at 9 (2012), http://www.jessehelmscenter.org/wp-content/uploads/2012/06/Marriage-and-the-Family.pdf. So the Republican Party's 1976 Platform recognized that:

> Families—not government programs—are the best way to make sure our children are properly nurtured. our elderly are cared for, our cultural and spiritual heritages are perpetuated, our laws are observed and our values are preserved.

The American Presidency Project, *Republican Party Platform of 1976* (Aug. 18, 1976), *available at* http://www.presidency.ucsb.edu/ws/?pid=25843.[3] "[T]hese self-reliant individuals (are) prepared to exercise both rights and responsibilities," within a free society of limited government. *Republican Party*

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[3]Republican Party Platform cites will hereinafter have the following format: "*Republican Party Platform of [year]* at [URL distinguishing number]." Full cites are in the Table of Authorities.

Platform of 1984 at 25845.

Furthermore, as the Republican Party's 2000 Platform explained, home and family is based on a father and a mother:

> Republicans recognize the importance of having a father and a mother in the home. The two-parent family still provides the best environment of stability, discipline, responsibility, and character.

Republican Party Platform of 2000 at 25849. However, when there is a breakdown in the family because

> the father has deserted this family, children are more likely to commit a crime, drop out of school, become violent, become teen parents, take illegal drugs, become mired in poverty, or have emotional or behavioral problems.

Id. These problems "not only lead to more government costs, but also to more government control over the lives of its citizens in all aspects." *Republican Party Platform of 2012* at 101961. And they resulted in "fracturing the family into isolated individuals, each of them dependent upon—and helpless before—government." *Republican Party Platform of 1992* at 25847.

And so, since the Republican Party supports equality, individual freedom and limited government:

> "As the family goes, so does the Nation. Strong families and strong communities make a strong America."

Id.

Traditional families, when based on a marriage

between a man and a woman, are often self-reliant and self-supporting, minimizing the role of government. Furthermore, they can provide mutual support and protection for family members, enabling members to better stand against oppressive governments. As a result, throughout its history, the Republican Party has stood against repeated and varied threats to the integrity of traditional marriage and the family and, often with bipartisan support, have sought state laws that promote and protect traditional marriage and family. These laws are constitutional.

I. The Republican Party Supports Traditional Marriage Because the Traditional Family Is the Foundation of a Free Society.

Since its inception, the Republican Party has been the champion of equality, individual freedom and limited government and, as a result, of the family. Its first Platform, adopted in 1856, vigorously opposed not only slavery but also polygamy—"the twin relics of barbarism," because the existence of slavery is a repudiation of the principle of equality, a denial of individual freedoms, and antithetical to a free society: and because polygamy undercut a free society by redefining marriage and thereby undermining the traditional family.[4] *Republican Party Platform of 1856*

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[4]Opposition to polygamy was "(m)otivated largely by traditional Protestant Christian concepts of sexual restraint and the importance of the family" and it was "assumed by many people" that promotion of polygamy was "motivated primarily by male sexual licentiousness and the desire to subjugate women." Stephen Eliot Smith, *Barbarians within the Gates: Congressional Debates on Mormon Polygamy,*

at 29619. Since then, the Republican Party has continued to respond to external threats to the family, by advocating care for the widows and children of military men that died in combat, *Republican Party Platform of 1868* at 29622, naturalization for immigrant women, protection of citizenship for American women marrying immigrant men, *Republican Party Platform of 1920* at 29635; supporting equal pay for workers regardless of sex, *Republican Party Platform of 1944* at 25835; protecting America's farming families, *Republican Party Platform of 1956* at 25838; supporting housing for low-income families, *Republican Party Platform of 1960* at 25839; *Republican Party Platform of 1964* at 25840; opposing welfare programs that erodes and discourages family unity, *Republican Party Platform of 1968* at 25841, nationalized compulsory health insurance, *Republican Party Platform of 1972* at 25842, abortion, the marriage tax, *Republican Party Platform of 1980* at 25844, pornography, *Republican Party Platform of 1984* at 25845, and divorce, *Republican Party Platform of 1996* at 25848; and by supporting adoption, *Republican Party Platform of 1988* at 25846, parental authority and responsibility, *Republican Party Platform of 1992* at 25847, the family's economic liberty and moral rights, *id.*, increasing child tax credits, *Republican Party Platform of 2000* at 25849, and family planning through abstinence, *id.*

With the turn of the twenty-first century came a renewed threat to the family: the redefinition of marriage. And so, for the first time in the 1996 Platform, the Republican Party addressed and opposed

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1850-1879, 51 J. Church & State 587 (Autumn 2009).

"same-sex unions." *Republican Party Platform of 1996* at 25848. As the redefinition threat grew, the Republican Party addressed the need for protection of traditional marriage in its 2000, 2004, 2008, and 2012 Platforms, *see Republican Party Platform of 2000* at 25849; *Republican Party Platform of 2004* at 25850; *Republican Party Platform of 2008* at 78545; *Republican Party Platform of 2012* at 101961, while making clear that "(w)e embrace the principle that all Americans should be treated with respect and dignity." *Republican Party Platform of 2012* at 101961.

And since 2012, all of the recently, unanimouslyadopted Republican National Committee[5]

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[5]The Republican National Committee ("RNC") is composed of three (3) members from each of the fifty (50) U.S. States, the District of Columbia, and five (5) U.S. Territories or Commonwealths—the Republican Chairman, the Republican National Committeeman, and the Republican National Committeewoman. These three members are elected according to their State's or Territory's Republican Party Rules. RNC members are often elected by a Convention of state delegates elected from every county in the State or Territory. So the RNC is a grassroots organization representing all Republicans throughout America. It is charged with the general management of the Republican Party. The composition of the one hundred sixty-eight (168) RNC members is diverse in culture and thought. They represent the spectrum of concerns from small states and large states, and of issues, rural and metropolitan, from across the country. All RNC members agree to operate under the Platform and Rules of the Republican Party adopted at the most recent quadrennial Republican National Convention. *See* Rules of the Republican Party, *available at* http://www.gop.com/rules-and-resolutions/.

Resolutions[6] on marriage fully support traditional marriage. Indeed, the issue has been of such import to the Republican Party that three Resolutions on marriage have been unanimously adopted since 2012: one on August 22, 2012, and two on April 12, 2013.

The unanimously-adopted Resolution in August of 2012, *RNC Resolution Defending Traditional Marriage*, stated that:

> The institution of marriage is the solid foundation upon which our society is built and in which children thrive.

Republican National Committee, *RNC Resolution Defending Traditional Marriage* (Aug. 22, 2012) *available at* https://cdn.gop.com/docs/2012_Summer-Meeting_Resolutions.pdf.

The first unanimously-adopted Resolution of April 12, 2013, reaffirmed the marriage principles established in the 2012 Platform. Republican National Committee, *Resolution Supporting Core Values of the 2012 Republican Platform* (April 12, 2013), available at http://cdn.gop.com/docs/Resolution_Supporting_Core_Values_of_the_2012_Republican_Platform.pdf. And the second unanimously-adopted *Resolution for Marriage and Children 2013,* passed that same day, reiterated

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[6]The full RNC considers adopted Resolutions during the RNC's General Session, as the Chairman of the Resolutions Committee reports them. Resolutions adopted at a RNC General Session represent the voice and the will of grassroots Republicans throughout the country, with copies sent to all Republican Congressmen and Senators and Congressional and Senatorial candidates, Republican Governors and Republican House and Senate leaders.

that:

> the institution of marriage is the solid foundation upon which our society is built and in which children thrive; and it is based on the relationship that only a man and a woman can form.

Republican National Committee, *Resolution for Marriage and Children* (April 12, 2013), *available at* http://cdn.gop.com/docs/Resolution_for_Marriage_and_Children_2013.pdf.

These Resolutions, along with the RNC Platform, demonstrate the Republican Party's long-held and current belief that traditional marriage, the union of one man and one woman, must be upheld as the national standard, a goal to stand for, encourage, and promote through laws governing marriage and family. It has been consistently recognized by the Republican Party, including most recently, that the family built upon marriage between one man and one woman is the "gold standard" for human interpersonal relationships. It is the union that forms the solid foundation on which a free society is built.[7]

And so the Republican Party's advocacy for traditional marriage is not about animus toward a particular subset of Americans based on sexual preferences,[8]

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[7]Amici recognize that not every marriage meets this ideal and that individual families that do not meet this ideal can succeed in society. Nevertheless, free society is benefitted by promoting the ideal as the standard to be encouraged and striven for.

[8]That the Republican Party is not driven by animus is

and, in fact, the prospect of same-sex marriages played utterly no role whatsoever in the Republican Party's 159-year-long defense of the family until the last few years. The Republican Party supported traditional marriage and family because it is the foundation for free society, and undermining it, by any means, undermines traditional family formation, thereby encouraging the growth of government and removing a key bulwark against government, particularly tyrannical and totalitarian ones.

Millions of women are currently having children outside of marriage, significantly increasing their risk of poverty and government dependence. *Marriage: America's Number 1 Weapon Against Child Poverty,* The Heritage Foundation, http://www.heritage.

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evident in the substantial participation of lesbians, homosexuals and homosexual rights supporters in the Republican Party. For example, the Brief Amici Curiae of Kenneth B. Mehlman lists 304 amici supporting same-sex marriage. While few of these amici have been in elected policy-making positions, such as in elected public office (66 amici are listed as current (11) or past (55) elected Republican public officials out of an estimated 500,000 elected public officials in the United States, Christopher R. Berry & Jacob E. Gersen, *The Fiscal Consequences of Electoral Institutions* at 14, *available at* http://www.law.uchicago.edu/files/344.pdf) or as elected Republican Party officers (10 are listed as current or past elected Republican Party officers), 191 of the amici have held important appointed positions in Republican Party organizations, candidate campaigns or government. 37 of the amici are listed in other private capacities, such as members of advocacy groups, philanthropists, or political commentators.

org/childpoverty/united-states (last visited March 31, 2015). This is the problem that the Republican Party's support for traditional marriage seeks to address. And in so doing, the prospects for a free society will be enhanced.

A. The Traditional Family Guards Against Poverty and the Need For the Growth of the Welfare State.

For decades. the Republican Party advocated for government support for post-Civil War widows with children. *Republican Party Platform of 1868* at 29622; *Republican Party Platform of 1900* at 29630. Recognizing the vital role a husband and father often plays in the family, and the substantial cost to the family of loss of a key member, the Republican Party supported a limited government role in ensuring such families succeed despite their loss. And these government programs did not encourage family breakup. The breakup occurred due to death in war.

Such is not the case for some welfare programs.

The Republican Party opposed the adoption of both President Johnson's Aid to Families with Dependent Children (AFDC) program, which expanded the welfare program to cover all unmarried parents with children, *see Republican Party Platform of 1968* at 25841 ("Welfare and poverty programs will be drastically revised to liberate the poor from the debilitating dependence which erodes self-respect and discourages family unity and responsibility"), and Johnson's "Great Society" food stamp program expansion, which ballooned during his term from 424,000 participants to 2.2 million. Michael Fumento, *Is The Great Society to Blame? If Not, Why*

Have Problems Worsened Since '60s?, Investor's Bus. Daily (June 19, 1992), available at http://fumento.com/economy/greatsociety.html. Such programs often undermined the family and increased dependence on and the growth of government.

The black community offers a case study justifying these concerns. Daniel Patrick Moynihan, a sociologist who was the Assistant Secretary of Labor under President Johnson and later a Democratic Senator from New York, observed the demise of the black family in 1964 and, filing a report in 1965, advocated for "a national effort towards the problems of Negro Americans must be directed toward the question of family structure." Patrick Moynihan, *The Negro Family: The Case For National Action*, United States Department of Labor (1965), *available at* http://www.dol.gov/dol/aboutdol/history/webid-moynihan.html.

> Implicit in Moynihan's analysis was that marriage orients men and women towards the future, asking them not just to commit to each other but to plan, to earn, to save, and to devote themselves to advancing their children's prospects. Single mothers. . tended to drift into pregnancy, often more than once and by more than one man, and to float through the chaos around them. Such mothers are unlikely to 'shape their children's character and ability' in ways that lead to upward mobility.

Kay S. Hymowitz, *The Black Family: 40 Years of Lies*, City Journal (Summer 2005), *available at* http://www.city-journal.org/html/15_3_black_family.html. However, the Johnson administration rejected Moynihan's recommendations and launched welfare programs that

often drove fathers out of their children's homes.

In 1960, 23 percent of black children were born out of wedlock (a level that seemed alarmingly high to Moynihan). Bryce Christensen, *Time for A New 'Moynihan Report'? Confronting the National Family Crisis*, The Family in America, Vol. 18, No. 10 (Oct. 2004), *available at* http://profam.org/pub/fia/fia_1810.htm. By 1987, after 15 years of the War on Poverty welfare programs of the Great Society, out-of-wedlock births rose to 62 percent. *Id.* At the same time, the marriage rate of black women ages 25 to 29 plummeted from 60 percent to 32 percent. *Id.* "And just as Moynihan had predicted, this unraveling of the black family incubated a nightmarish brood of social problems—crime, abuse, academic failure, economic distress, homelessness, and physical and mental illness." *Id.* Moynihan identified "a tangle of pathology" that he said characterized the community, including "delinquency, joblessness, school failure, crime, and fatherlessness." Homes, *supra.*

This occurred because the government's response, rather than strengthening families, instead listened to critics that ridiculed the report as a racist effort to blame the victim and so pursued its "War on Poverty" with programs directed not at reforming the family but instead reinforced dependency on government and undermine the family:

> [Before the report, many poor black (and white) couples made the heroic efforts necessary to keep their marriages and families together because their cultural leaders continually told them it was worth doing so. [after the report] in the sixties prominent figures in

> law, the media, and entertainment—including those savaging the Moynihan Report—began to send the message that Americans who were 'morally superior' looked down *not* on 'anyone who had a baby without marrying. . [but rather] on anyone who *disapproved* of unwed mothers. When poor blacks began to hear that message . they naturally gave up making heroic efforts to keep their marriages and families together. It was then that black divorce and illegitimacy rates soared.

Christensen, *supra* (emphisis in original).

Moynihan's prediction also bears out anecdotally. First Lady Michelle Obama was born in 1964 in Parkway Gardens in Chicago and lived there for two years before moving with her family closer to Lake Michigan in 1965. Her family was a traditional one: "the mother at home, the father works, you have dinner around the table. I had a very stable, conventional upbringing, and that felt very safe to me." Leslie Bennetts, *First Lady in Waiting*, Vanity Fair (Dec. 2007), *available at* http://www.vanityfair.com/news/2007/12/michelle_obama200712.

Now, the Parkway Gardens area is referred to as "O" Block—so named for 20-year-old gang member Odes Perry gunned down there in 2011. It was the most dangerous block in Chicago between 2011 and 2014, with 19 shootings. Why the difference? According to local preacher Rev. Cory Brooks, "(t)he environment was family-focused People were working. When you eliminate all those things from a community—men not in the household and education failing—it will be a drastic difference than what the first lady of the

United States and her family experienced."[9] Frank Main, *The Most Dangerous Block In Chicago*, Chicago SunTimes (Oct. 31, 2014).

This culture of dependence did not only impact the black community:

> When Johnson launched the War on Poverty, 7 percent of American children were born outside of marriage. Today, the number is over 40 percent. . . there has been no significant increase in the number of married-couple families with children (both poor and non-poor) in the U.S. since 1965. By contrast, the number of single-parent families with children has skyrocketed by nearly 10 million, rising from 3.3. million such families in 1965 to 13.2 million in 2012. Since single-parent families are roughly four times more likely than married-couple families to lack self-sufficiency (and to be officially poor), this unraveling of family structure has exerted a powerful downward pull against self-sufficiency and substantially boosted the official child poverty rate.
> welfare began to serve as a substitute for a husband in the home [and] the welfare system actively penalized low-income couples who did marry by eliminating or substantially reducing benefits. As husbands left the home,

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[9]Indeed, Rev. Brooks camped out on the roof of a boarded-up motel on "O" Block to draw national attention to the rampant gunfire in the neighborhood. He has raised more than $450,000 from his rooftop campaign to convert the motel to a community center. Main, *supra*.

> the need for more welfare to support single mothers increased . creat[ing] a destructive feedback loop: Welfare promoted the decline of marriage, which generated the need for more welfare.

Robert Rector and Rachel Sheffield, *The War on Poverty After 50 Years*, The Heritage Foundation (Sept. 15 2014), *available at* http://www.heritage.org/research/reports/2014/09/the-war-on-poverty-after-50-years. Unlike a program providing financial support to military families that lost a parent or spouse due to war, these programs often encouraged single-parent households and thereby encouraged a culture of dependency to which the Republican Party objects.

B. The Traditional Family Protects Against Tyranny And Government Excess.

Totalitarian regimes exhibit one common trait: they aim to undermine or destroy of the family. Such destruction eradicates competition for allegiances, "atomizing" individuals so that they have no attachment to a job, family, friends or class, and isolating them to make them more vulnerable and dependent:

> Totalitarian government . could not exist without destroying the public realm of life by isolating men (and women), their political capabilities. But totalitarian domination . . . is new in that it destroys private life as well. It bases itself on loneliness, on the experience of not belonging to the world at all, which is among the most radical and desperate experiences of man.

Hannah Arendt, *The Origins of Totalitarianism* 475

(1951). Traditional families—husband, wives, children—guard against such tyranny and try to support and protect family members from government abuse and controls that are the hallmark of such governments. Traditional family structures give the purpose, direction, obligation, and support which helps family members oppose the destruction of a free society by such regimes.

II. Traditional Marriage Ensures A Free Society By Protecting the Traditional Family.

A. The Traditional Family Is Stable, Independent, Self-Supporting and Self-Sufficient, Replicating Itself Indefinitely.

A free society flourishes with traditional families at its foundation. This is because the traditional family has four essential components.

First, the traditional family is stable. "76% of mothers who married before giving birth remained intact compared to 44% of those who married later and 31% of those who never married." Harry Benson, *Get married BEFORE you have children,* Marriage Foundation (March 2015), *available at* http://www.marriagefoundation.org.uk/Shared/Uploads/Products/15035_MF%20paper%20-%20Get%20married%20before%20children.pdf. The traditional family offers predictability and security.

Second, the traditional family is independent. It can exist without government. And because allegiances to the family come first, its members will defend against unwanted and excessive government intrusion.

Third, the family is self-sufficient. Both husband and wife are motivated to ensure the success for their

family, helping keep the family out of poverty. Rector and Sheffield, *supra*.

Last, the traditional family encourages the creation of children. "Coitus" (from the Latin *coitus*, the coming together of male and female sex organs) is the act that "consummates" a marriage:

> In coitus, and there alone, a man and a woman's bodies participate by virtue of their sexual complementarity in a coordination that has the biological purpose of reproduction—a function that neither can perform alone.

Sherif Girgis, Ryan T. Anderson, Robert P. George, *What is Marriage? Man and Woman: A Defense* 99 (2012). The biological complementarity of its parent members ensures the traditional family will perpetuate itself indefinitely.

B. Traditional Marriage Offers Unique Features That Reinforce The Strength of Traditional Family.

Traditional marriage[10] strengthens the traditional family. It does this through six key features it seeks to promote.

First, it seeks to be permanent. Ryan T. Anderson, *Monogamy, Exclusivity, and Permanence?*, The Heritage Foundation (Dec. 13, 2012), *available at* http://www.heritage.org/research/commentary/2012/12/monogamy-exclusivity-and-permanence. Marriage

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[10]Such marriages are equally available to all. *See Loving v. Virginia*, 388 U.S. 1, 12 (1967). They are not compulsory. *Id.*

is to be undertaken as a lifelong commitment between spouses to family life.

Second, it is monogamous. *Id.* Only one man and one woman may participate in any one marriage. This forms strong allegiances between the two partners that protect the stability and independence of the family.

Third, it promotes sexual exclusivity. *Id.* National surveys have consistently found that the majority of heterosexual marriages are faithful, with 75-81% of men and 85-88% of women reporting that they have had no extramarital sex. Michael W. Weiderman, *Extramarital Sex: Prevalence and Correlates In A National Survey*, The Journal of Sex Research, at 34 (1997); *ABC News Primetime Live Poll: The American Sex Survey* (2004), *available at* http://abcnews.go.com/images/Politics/959a1AmericanSexSurvey.pdf; Tom W. Smith, *American Sexual Behavior: Trends, Socio-Demographic Differences, and Risk Behavior*, at 8 (2006), *available at* http://www.norc.org/PDFs/Publications/AmericanSexualBehavior2006.pdf. This too reinforces strong allegiances that promote stability and independence within the family and its perpetuation.

Fourth, it is comprehensive. It encompasses every aspect of a person's existence including sexual relations. This also promotes stability, independence, self-sufficiency, and perpetuation.

Fifth, it has unified ends—a lifetime commitment to family life. This too helps to ensure the stability and self-sufficiency of the family.

And last, it is heterosexual. "Males and females are inherently different. Marriage serves to bring these

two genders together. males and females are complementary." Frank, *supra*. In this way, marriage brings about gender integration. Frances Kelly, *Shifty Words: What does "marriage equality" actually mean?*, Mercatornet (Feb. 5, 2012), *at* http://www.mercatornet.com/articles/view/shifty_words. "Without both, the marriage is incomplete," Frank, *supra*, and the family often suffers. Indeed, as Justice Ginsburg recently observed:

> A wise old man and a wise old woman will reach the same judgment. I think that is true. But we also bring to the table our life's experience, which is different. A very important difference: Are you male? Are you female?
> All of those differences, I think, make The Supreme Court bench, make all the benches in the country, ever so much better than they were when only one kind of person sat in the seat of judgment.

A Conversation with Ruth Bader Ginsburg, 56 *The Record of the Association of the Bar of the City of New York* 8, 9 (Winter 2001). Even more so for the family. Heterosexuality helps ensure that the family is self-sufficient and can reproduce itself indefinitely.

C. Traditional Marriage Benefits Husbands, Wives and Mothers, Children, and Society.

"[M]arried people in Western Europe and North America are generally happier, healthier, and better protected against economic setbacks and psychological depression than people in any other living arrangement." Stephanie Coontz, *Marriage, A History: From Obedience to Intimacy, or How Love Conquered Mar-*

riage 309 (2005). All members of the family—husbands, wives and mothers, and children—and society can benefit from such arrangements.

1. Mothers Benefit from Traditional Marriage.

The benefits of traditional marriage for mothers are substantial. Only 6.8% of married mothers live in poverty, 82% less that their single mother counterparts. *Marriage: America's Number 1 Weapon Against Child Poverty, supra.* Indeed, "[i]f poor women who give birth outside of marriage were married to the fathers of their children, two-thirds would immediately be lifted out of official poverty into self-sufficiency." Rector and Sheffield, *supra*. And "76% of mothers who were married before having their first child remained so 15 years on." *First comes love, then comes marriage . tying the knot before first baby is a key ingredient for marriage success*, Marriage Foundation (Mar. 9 2015), http://www.marriagefoundation.org.uk/Web/News/News.aspx?news=179&RedirectUrl=%2FWeb%2FContent%2FDefault.aspx%3FContent%3D440.

The qualities that traditional marriage promotes —permanence, monogamy, and sexually exclusivity— seek to create a secure environment for a mother to raise her children. Without it, she often struggles to make ends meet and can be forced to be dependent on others, including the government, for support.

2. Men Benefit From Traditional Marriage.

The benefit of traditional marriage to men is substantial as well. Men benefit from the socializing effect that women bring in a marriage:

> women transform male lust into love;

> channel male wanderlust into jobs, homes and families; link men to specific children; rear children into citizens; change hunters into fathers; divert male will to power into a drive to create. Women conceive the future that men tend to flee .

George Gilder, *Men and Marriage* 5 (1986).[11]

Thus, marriage helps to focus a man's energy and aggression to socially desirable ends—providing for and protecting wives and children, making their wives and children feel secure, happy and loved. Without such a traditional family structure—single mother families on welfare, for example—the "marginalization of the men" can occur. Fumento, *supra*. When men lack an obligation of responsibility to support their children and their mother, studies show an increase in not just male unemployment but an unavailability to work at all. *Id.*

Thus, married men are:

> more attached to the labor forces, on average earn higher wages each year they are married, have less substance abuse, commit less crime, are less likely to be the victims of crime, have better physical and psychological health, live

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[11]Indeed, "the long term presence of men helping raise families brings long term benefits to women. . . . where the status of men is lackluster, so too will be the status of women." Andrea Mrozek, *The Status of Men: Boys Are Lagging. How Does The Decline of Marriage Play A Role?*, Institute of Marriage and Family Canada, *available at* http://www.imfcanada.org/sites/default/ files/StatusOfMen_ Nov2010_Final_web.pdf.

> longer, and are less likely to be victims of a serious accident.

George A. Akerlof, *Explorations in Pragmatic Economics: Select Papers of George A. Akerlof* 163-64 (2005). Traditional marriage promotes male productivity and gives men a socially desirable purpose.

3. Children Benefit From Traditional Marriage.

Children also can benefit from the presence of their mother and father in their household. Indeed:

> [I]t is not simply the presence of two parents. . . but the presence of *two biological parents* that seems to support children's development. [R]esearch clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in step families or cohabiting relationships face higher risks of poor outcomes There is thus value for children in promoting strong, stable marriages between biological parents."

Ryan T. Anderson, *Marriage Matters: Consequences of Redefining Marriage,* The Heritage Foundation (March 18, 2013), *available at* http://www.heritage.org/research/reports/2013/03/why-marriage-matters-consequences-of-redefining-marriage (*quoting* Kristin Anderson Moore, Susan M. Jekielek, and Carol Emig, *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do About*

It?, Child Trends *Child Research Brief* at 1, 6 (June 2002)) (emphasis in original).

Men and women often have different but complementary parenting styles that are essential to a child's development: "Mothers [may] use more parenting techniques of gentleness and security, while fathers [may favor independence and confidence-building. These approaches help children understand the world in different ways; they balance each other." William Scott and Amy De La Hunt, *The Important Role of Fathers in the Lives of Young Children*, Parent as Teachers (last updated Nov. 16, 2011), *available at* http://www.parentsasteachers.org/images/stories/documents/Fatherhood_Resources/ImportantRoleofFathers.pdf. "While mothers tend to provide more emotional warmth for their children, fathers often provide a strong sense of security. While children usually can depend on their mothers for unconditional love, they often must earn their father's approval. While mothers soothe their children more often, fathers often provide more stimulation." *How Do Fathers Fit In?*, Civitas: The Institute for the Study of Civil Society, http://www.civitas.org.uk/hwu/fathers.php.

Fathers also can influence the moral development of their children as role models: "Adults whose fathers had been highly involved when they were children were more tolerant and understanding and engaged in more socially responsible behavior than those with less involved fathers." *Id.* Conversely, "'boys raised in father-absent homes gravitate to gangs and gang-activities,' apparently . . because [they] lack a healthy domestic exemplar and are therefore trying to 'demonstrate compensatory masculine development,' a

kind of pathological 'hypermasculinity' evident in aggressive gang activities." Christensen, *supra* (*quoting Young, Black, and Male in America: An Endangered Species* 195 (1988) *and* Patricia Moran and Allan Barclay, *Effects of Fathers' Absence in Delinquent Boys: Dependency and Hypermasculinity*, 62 Psychological Reports 115-121 (1988)).

Boys raised with engaged fathers have fewer behavioral problems, and adolescent girls with involved fathers often grow up with healthier, more positive opinions of and relationships with men. Nadia Haris, *Role of Fathers in Child Rearing*, http://everydaylife.globalpost.com/role-fathers-child-rearing-3454.html. Involved fathers provide emotional security and confidence in their children, giving them stronger self-esteem, a healthy body image, and making them better able to avoid drugs and other negative influences. *Id.* They are less likely to suffer from depression, are better able to cope with stress and frustration during learning and studying, and are more likely to be sociable, friendly, and popular with their peers. *Id.*

Mothers are also critical for their children's well-being. Mothers:

> seem to connect with their sons just by being with them, by giving them their undivided attention, and by making themselves available as an unfailing source of love, comfort, and support. . the absence of a close relationship with a loving mother puts a boy at a disadvantage in becoming a free, confident and independent man . .

William Pollock, *Real Boys: Rescuing our Sons from the Myths of Boyhood* 82 (1998). Children can benefit from traditional marriage.

4. Society Benefits From Traditional Marriage.

Since Aristotle, western civilization has recognized the primacy of marriage and the family: "A free society requires self-restraining, self-monitoring, self-governing adults." Jennifer Morse, *Love and Economics* 6 (2008). *See* Aristotle, *The Politics of Aristotle* 9 (1997) (observing that one of the first communities of the household is that of "husband and wife for generation "). And so:

> It is hard to conceive an interest more legitimate and more paramount for the state than promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society.

Lofton v. Secretary of the Department of Children and Family Services XI, 358 F.3d 804, 819 (11th Cir. 2004).

Traditional marriage promotes the family, which is often "essential to raising individuals who exhibit trust, cooperation, and self-restraint, qualities which American society is built upon and that the family inculcates into children." Frank, *supra*, at 11 (*citing* Morse, *supra*, at 6). Traditional marriage "is society's least restrictive means of ensuring the well-being of children. [It] encourag[es] men and women to commit to each other and take responsibility for their children." Anderson, *Marriage Matters*, *supra*. By promoting traditional marriage, society promotes a

commitment to value children and their upbringing. Ryan T. Anderson, *Marriage: What It Is, Why It Matters, and the Consequences of Redefining It* (Mar. 11, 2013), *available at* http://www.heritage.org/research/reports/2013/03/marriage-what-it-is-why-it-matters-and-the-consequences-of-redefining-it.

III. The Traditional Family Is Undermined By Legal Recognition of Same-Sex Marriage.

A. The History of the Same-Sex Marriage Movement.

While many want same-sex marriage for the benefits they think they would enjoy, in the gay liberation movement, it represents the victory of one strategy aimed at undermining traditional marriage over another. As the gay liberation movement rose to greater prominence in the wave of the 1960s feminist movement, it adopted the Leftist[12] critique of the marriage institution:

> Feminists and gay rights scholars have critiqued marriage both in its historical and contemporary permutations. This critique has largely hinged on marriage as a vehicle for subordinating women and children in a gender-hierarchical structure. Feminist critical efforts have focused on revealing and decreasing the extent to which women's economic, legal, and social power hinges on marriage and on the gender hierarchy within marriage. Gay

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[12]Both 1960s feminism and gay liberation are Leftist movements. Suzanne A. Kim, *Skeptical Marriage Equality*, 34 Harv. J.L. Gender 37, 42 (2011).

> rights scholars have also focused on the heteronormative discipline that marriage imposes on sexual minorities.

Kim, *supra*, at 42 (emphasis added); *see also* Julie Shapiro, *Reflections on Complicity*, 8 N.Y. City L. Rev. 657, 660-661 (2005) ("[E]choing earlier feminists, [gay liberationists] saw the very institution of marriage as a negative rather than a positive social force. They identified it as a patriarchal and oppressive institution that has historically limited the rights of women and would narrow the meaning of liberty in the future.").

Gay liberationists, like their feminist counterparts, had great antipathy to marriage in general:

> At the time [the early 1970s], many heterosexual feminists chose not to marry in order to make a statement against marriage, which they believed to be an oppressive, patriarchal institution. *I believe that the desire to marry in the lesbian and gay community is an attempt to mimic the worst of mainstream society*, an effort to fit into an inherently problematic institution that betrays the promise of both lesbian and gay liberation and radical feminism.

Nancy D. Polikoff, *We Will Get What We Ask For: Why Legalizing Gay And Lesbian Marriage Will Not "Dismantle The Legal Structure Of Gender In Every Marriage,"* 79 Va. L. Rev. 1535, 1536 (1993) (emphasis added). For gay liberationists (and radical feminists), marriage—whether traditional or same-sex—imposes "gender" distinctions and "gender" based duties and

attitudes that are unequal and therefore unjust. Historical and contemporary same-sex relationship research reveals that "same-sex partners assume[] the traditional gendered roles of different-sex couples." *Id.* at 1537-1538 (citing sources); Christopher Carrington, *No Place Like Home: Relationships and Family Life among Lesbians and Gay Men* 14-16 (1999) (finding empirically same-sex relationships do not result in equal division of domestic labor).

A huge shift in gay liberation rhetoric occurred after the court in *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), held that denying a state-sanctioned marriage to same-sex couples violated the Massachusetts constitution. A new rhetoric ascended, framing same-sex marriage as just another form of marriage:

> Where once 'the marriage debate' referred to the debate between various factions within the lesbian and gay movements, it now means the debate between those advocating 'access to marriage for same-sex couples' and those opposed to 'same-sex marriage.'

Shapiro, *supra*, at 665. The original radical feminists and gay liberationists' marriage abolition rhetoric mostly disappeared from the public debate, but those activists took comfort that same-sex marriage would disrupt the institution of marriage: "Its potential is to disrupt both the gendered definition of marriage and the assumption that marriage is a form of socially, if not legally, prescribed hierarchy." Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture* 109 (2006). Same-sex marriage also serves for some as "civil disobedience" and "political resistance" to traditional hetero-

sexual marriage, as it would "disrupt heteronormative notions of public and private and proper place," and it signals "refusal to comply with heterosexist silences and invisibility of same-sex relationships." Nicola Barker, *Not the Marrying Kind: A Feminist Critique of Same-Sex Marriage* 121 (2012).

Shifting the same-sex marriage rhetoric from abolitionist to assimilationist was and remains part of a strategy by many to undermine marriage while claiming to protect it. *See* Shapiro, *supra*, at 658 (identifying herself as "anti-marriage," the author for strategic reasons nevertheless pursues same-sex marriage "litigation [that] seeks a goal that I reject.").

B. The Legalization of Same-Sex Marriage Requires a Redefinition of Marriage.

"Heterosexual marriages differ from same-sex marriages in purpose, method, and fruit." Frank, *supra*, at 6. "Creating a distinction between heterosexual and same-sex marriages is not arbitrarily discriminatory. It is a distinction based on the nature and purpose of marriage." Frank, *supra*, at 8. Even if the intent is not to undermine marriage, to make heterosexual and same-sex marriage equal, marriage must necessarily be redefined.

The key revision is to subordinate children's need for biological parents to adult desires, however manifest, reducing marriage to "emotional bonds or legal privileges. emotional intensity [i]s the only thing that sets marriage apart from other bonds." Anderson, *Marriage: What It Is*, *supra*. This redefinition makes traditional marital norms arbitrary and nonsensical as a principled matter:

> There is no reason of principle that requires an emotional union to be permanent. Or limited to two persons. Or sexual, much less sexually exclusive (as opposed to "open"). Or inherently oriented to family life and shaped by its demands. if sexual complementarity is optional for marriage, then almost every other norm that sets marriage apart is optional.

Id.

It is with this redefinition of marriage that the Republican Party finds its defense of the family come full circle. For under this new definition, polygamy—to which the Republican Party objected in 1856 on account that it undermine the family—returns to the debate, in all of its various forms. *See, e.g.*, Red Dawn, *Lesbian Couple+Husband+Two babies=Completely Normal? Alrighty Then,* Chicks On The Right (Mar. 13, 2015), http://chicksontheright.com/blog/item/27790-lesbian-couple-husband-two-babies-completely-normal-family-alrighty-then.

Nor will the marriage redefinition effort end here. Beyondmarriage.org is collecting signatures for a cutting edge manifesto-style petition—endorsed already by prominent mainstream "lesbian, gay, bisexual, and transgender (LGBT) and allied activists, scholars, educators, writers, artists, lawyers, journalists, and community organizers," *see* http://beyondmarriage.org/signatories.html,——seeking the recognition for other relationships, such as "[s]enior citizens living together and serving as each other's caregivers (think Golden Girls)," "[a]dult children living with and caring for their parents," "[s]enior citizens who are the primary caregivers to their grand-

children or other relatives," "[c]lose friends or siblings living in non-conjugal relationships and serving as each other's primary support and caregivers," and more. *Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families and Relationships*, beyondmarriage.org, *at* http://www.beyondmarriage.org/.

And so not only is marriage redefined, but the original gay liberationists' objectives are achieved after all: traditional marriage, an institution that protects the family and free society, is reduced to simply just another relationship, no more valuable than any other.

C. Same-Sex Marriage Does Not Provide the Same Benefits as Traditional Marriage.

"The greatest form of inequality is treating unequal things equally." Frank, *supra*, at 6. Yet redefining marriage to treat same-sex marriage the same as traditional marriage does precisely this.

In its redefinition of marriage, same-sex marriage loses key qualities that promote a free society. First, it does not have the same stability of traditional marriage. In Sweden, which allowed for the registration of same-sex partnerships in 1995, male same-sex registered partners[13] had a 50% percent greater chance of divorce then heterosexual married couples,[14] while

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[13] The legal effects of a registered partnership are basically the same as marriage. Anders Agell, *Family Forms and Legal Policies, A Comparative View from a Swedish Observer*, Stockholm Institute for Scandinavian Law, at 208 (1998).

[14] A CDC study found that 57% of heterosexual marriages

female same-sex registered partners had a 167% percent greater chance of divorce. Gunnar Andersson, *Divorce-Risk Patterns in Same-Sex "Marriage" in Norway and Sweden*, at 30 (Nov. 2004), *available at* http://www.uni-koeln.de/wiso-fak/fisoz/conference/papers/p_andersson.pdf. In the Netherlands, the average length of a male homosexual relationship is approximately 1.5 years. Maria Xiridou, *The Contribution of Steady and Casual Partnerships to the Incidence of Aids*, Aids 17 (2003). The National Longitudinal Lesbian Family Study (NLLSF)[15] found "significant differences" in family dissolution rates between the lesbian and mother/father headed families over the years of the study. The lesbian homes broke up at much higher rates compared with heterosexual families (56% vs. 36%). Nannette Gartrell, Henry Bos, and Naomi Goldberg, *Adolescents of the U.S. National Longitudinal Lesbian Family Study: Sexual Orientation, Sexual Behavior, and Sexual Risk Exposure*, 40 Archives of Sex. Behav. 1199, 1201 (2011). Same-sex

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last 15 years or more. National Center for Health Statistics, Centers for Disease Control, *Forty –Three Percent of First Marriages Break up Within 15 years, at* http://www.cdc.gov/nchs/releases/01news/first-marr.htm.

[15]The National Longitudinal Lesbian Family Study (NLLSF) is the longest-running and largest prospective investigation of lesbian mothers and their children in the United States. For more than a quarter century, this study has been providing information to specialists in healthcare, family services, adoption, foster care, sociology, feminist studies, education, ethics, same-sex marriage, civil union, and public policy on matters pertaining to LGBT families. Its website can be found at http://www.nllfs.org/.

marriage does not offer the permanence or stability traditional marriage does.

Second, same-sex marriage is much less sexually exclusive. A study of 156 male couples in relationships that had lasted from 1 to 37 years showed that only one half of one percent (0.5%) maintained sexual fidelity. David P. McWhirter, Andrew Mattison, *The Male Couple: How Relationships Develop* 150, 156 (1984).[16] The study concludes that "the expectation of outside (sexual) activity was the rule for male couples and the exception for heterosexual couples." *Id.* at 3.

The diminished presence of these qualities in same-sex marriages—stability and sexual exclusivity—is likely tied to the absence of a third quality: the socializing influence of the opposite sex. As evidenced above, men tend to be more sexually permissive than women and are more likely to have numerous sexual partners without a woman in the relationship. Mark Regnerus, *Yes, Marriage Will Change–and Here's How*, The Witherspoon Institute (June 7, 2013), *available at* http://www.thepublicdiscourse.com/2013/06/10325/. And women are more likely than men to initiate divorce because of their different emotional makeup. *Id.* The complementary, tempering effect of the opposite sex is simply not present in same-sex marriages.

Finally, children—which are only available through the help of a third party, because same-sex

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[16] Mssrs. McWhirter and Mattison were a homosexual male couple, one a psychiatrist and the other a psychologist, who started their research questioning the premise that gay male relationships are promiscuous and transient. Arthur Goldberg, *Light In The Closet* 516 (2008).

couples cannot reproduce alone, *see* Austin Ruse, *Legendary Gay Designers oppose Gay Marriage, Gay Parenting, Surrogacy*, Breadboard (Mar. 14, 2015)("'I call children of chemistry, synthetic children. Uteri for rent, semen chosen from a catalogue,' Dolce stated."), *available at* http://www.breitbart.com/big-government/2015/03/14/legendary-gay-designers-oppose-gay-marriage-gay-parenting-surrogacy/—are often raised without knowing one of their biological parents and without the benefits of having both a mother and father. This is often a loss to a child no matter how dedicated the other partner is. Heather Barwick, *Dear Gay Community: Your Kids Are Hurting*, The Federalist (Mar. 17, 2015), http://thefederalist.com/2015/03/17/dear-gay-community-your-kids-are-hurting/.

D. The Legalization of Same-Sex Marriage Does Not Promote Marriage.

Even if same-sex marriage did not redefine marriage and thereby deprive the family of key qualities that support a free society, its recognition has done nothing to promote the institution of marriage. In countries that have redefined marriage and legalized same-sex marriage, marriage continues to decline. While marriage trends show that marriage was on the decline in countries like the Netherlands, Belgium, Spain, Norway, and Sweden before they adopted same-sex marriage laws, that trend is unaffected with the adoption of such laws. *Will fewer straight people marry if gay people can?*, FullFact.Org (Dec. 12, 2012). https://fullfact.org/factchecks/same_sex_marriage_rate_heterosexual_straight_gay-28656. For example, in the five years prior to the Netherlands' adoption of same-sex marriage, the marriage rate

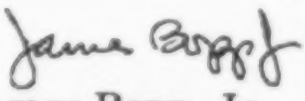
dropped 10 points. *Id.* Five years after same-sex marriage was legalized, that decline continued downward another 12 points. *Id.* Even more dramatic is Spain, whose marriage rate from the prior five years declined 15 points and whose post-five year rate declined another 23 points. *Id.* Only Belgium experienced an increase in its post-five year rate, though that level still remains lower than its pre-five year rate. *Id.*

The government's interest in ensuring a free society justifies its promotion of not simply marriage, but traditional marriage. Since same-sex marriage is unlikely to provide the same benefits as traditional marriage, the government has no obligation to recognize or promote same-sex marriage.

Conclusion

The Republican Party has long known that the key to a free society is the family, based on a marriage between a man and a woman. Respondents States have a sufficiently important government interest in protecting traditional marriage, because such marriages preserve the traditional family and ensure that America remains free. Their laws promoting and protecting marriage are constitutional.

Respectfully submitted,



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